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TELECOMMUNICATIONS SERVICES

12 January 1994

Secretary of the FCC
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**COMMENTS ON PROPOSED RULEMAKING REGARDING TOLL FRAUD
(Docket No. 93-292)**

Ladies and Gentlemen:

In response to the Federal Communications Commission's request for public comment on the above referenced issue, Flex Communications, Inc. respectfully submits these comments. As a regional long distance carrier we deal with the problem of toll fraud on a daily basis. We agree with the commission that strong measures must be taken to control this serious problem. These comments shall first address several of the FCC's proposed rules and then provide our suggestions that we hope shall be helpful to this cause.

Flex Communications agrees with the FCC that IXC's tariff language should warn users of the risks of toll fraud. We further agree that IXCs must have the affirmative duty to effectively warn users via bill inserts, annual notices, and other methods.

The FCC has asked for comment on whether it should apportion the costs of CPE-based toll fraud on the basis of whether carriers, CPE owners, equipment manufacturers, or others were in the best position to avoid, detect, warn of, or control the fraud and of how said responsibilities should be delineated. Flex Communications feels strongly that this is a flawed approach. CPE-based toll fraud exists because the vendors that sell the equipment do not make the user aware of how features of the equipment may be utilized to commit toll fraud. It must be the sole responsibility of these vendors to explain to the user how DISA, maintenance ports, ACD's, etc. can be "hacked". It is unreasonable to subject IXCs to liability for not detecting toll fraud caused by these vendors failure to properly disclose the risks that are built into their products. The vast majority of toll fraud cases we have dealt with have been the result of unprotected features of the PBX or ACD. In almost all cases, the user was not even aware that the features existed in their equipment. In short, the equipment vendors do not properly disclose the existence of features which can permit outdialing nor do they explain the risks of maintenance ports and of using default passcodes.

The FCC has asked for comments on whether the failure of an IXC to offer services to limit a user's toll fraud exposure is an unreasonable practice and whether IXCs should be required to offer certain levels of toll protection. Flex Communications strongly disagrees with this proposal. It is unreasonable to place the burden of controlling toll fraud on the IXC. The truth of the entire issue of toll fraud is that it is caused by the user and by the equipment manufacturers and vendors. As mentioned in the preceding paragraph, it is the capabilities of the equipment that create the opportunity for fraud to be committed. Manufacturers design and build equipment with advanced capabilities to access the equipment from the outside (DISA, maintenance ports, etc.) and yet make no effort to build in safeguards to prevent abuse. The vendors who

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sell to the user know the risks and yet make no effort to warn the user or even explain all of these access possibilities. They take no steps to assure that the default passcodes are changed by the user upon installation. The end users as a whole have, inexplicably, made little effort to safeguard their systems from abuse. If all users programmed their PBX's not to allow calling to the 809 area code, how much toll fraud would there be? Keeping maintenance ports deactivated until they are needed would prevent hackers from dialing in and activating features such as DISA. Routinely changing passcodes and requiring passcodes to place international calls would also deal a serious blow to the toll fraud industry. Instead of requiring IXC's to incur considerable cost to implement detection schemes, we suggest requiring the IXC's to disclose their toll fraud detection schemes as part of the language of their service contracts. This would empower the user with necessary information with which to choose a carrier should he wish to base his decision in part upon the IXC's ability to detect fraud.

In addition to comments on the above FCC proposed rules, we offer the following analysis to aid in the establishment of an effective FCC toll fraud policy.

RESPONSIBILITY

The proposed FCC rules give the strong indication that the present course of action is to lessen the user's responsibility for toll fraud. We at Flex Communications empathize with the plight of toll fraud victims. We have seen viable businesses devastated by its effects. The fact remains, however, that the only opportunity to PREVENT toll fraud is on the customer premise. If the hacker cannot get onto the user's lines, the user will never be liable. The opportunity to get onto these lines is provided by the user and the user's equipment. Therefore, the equipment manufacturers and users must incur the liability. Only then will the equipment manufacturers and vendors begin to properly design and install equipment and warn the users of the inherent risks. Only then will the users take the necessary steps to safeguard their systems. The toll fraud industry saps billions of dollars from our nation's legitimate business economy. Sharing the liability for this loss is not the answer. Detecting and therefore limiting the cost is not the answer. Prevention and punishment are the only answers.

LITIGATION

Flex Communications strongly feels that any rules which result in a shared liability for CPE-based toll fraud shall increase rather than decrease the overall cost of toll fraud. This is because it is inevitable that even those users who are solely liable for instances of fraud will, in many cases, choose to contest the matter in the hope that the IXC's and other parties will offer a settlement rather than engage in a protracted and complex evidentiary proceeding. The huge volume of litigation that will result shall place a frivolous strain on our legal system. The flood of litigation which will inevitably result shall increase costs to the IXC's and will no doubt be seen in higher rates to end users. Even more disturbing is that there is no doubt that these rate increases will be passed on to those who can least afford them; small businesses. High volume users will surely not be affected. In addition, small IXC's and resellers can surely not afford to absorb large losses from uncollectible toll fraud bills. It is simply not justice to allow a plaintiff to even attempt to force liability on a party for a loss incurred due to their own negligence.

PUNISHMENT

One area that must be a major part of any attempt to address the problem of toll fraud is that of punishment. The overwhelming reason that toll fraud has become a multi-billion dollar industry is that it is a low risk crime. Evidence indicates that former drug dealers are turning to toll fraud as their occupation because the profits are high and the risk is low. IXC's cannot prosecute offenders. Only end users can and



normally do not because the lost work hours are unacceptable, conviction difficult, and punishment is minimal. We must accept the fact that the toll fraud industry is just that, an industry. An industry that our system of justice is largely responsible for because risk of conviction is low and punishment for conviction is minimal. These criminals have abused the privileges of freedom to create their own organized crime culture. They publish magazines and newsletters, they advertise "franchise type opportunities", they hold conventions, give lectures, and maintain computer bulletin boards and voice mailbox systems to share "hacked" codes and solutions to new protection schemes. Before any meaningful steps can be taken to prevent toll fraud, these crimes and the punishments for them must be changed. Toll fraud must NEVER be a misdemeanor offense. Using or maintaining electronic bulletin boards or voice mail to propagate toll fraud must surely be a felony. It is typical that felony crimes are usually those that harm people. Well, toll fraud certainly fits the bill. Toll fraud losses are passed on to consumers in higher prices on many goods. Losses due to toll fraud often force firms to initiate cost cutting measures that usually include lay-offs, and sometimes include bankruptcy. Re-classifying fraud crimes as felony offenses is not enough. This must be combined with establishing mandatory and severe penalties. Courts are far too lenient in sentencing the few offenders that are convicted. Parole boards are much too willing to release these convicts after serving only a fraction of their light sentences. In short, felony status for fraud crimes and mandatory sentences are essential to deal any significant blow to this growing sub-culture of crime. It is indeed time that the punishment fit the crime.

We at Flex Communications would like to thank the FCC for the opportunity to participate in this effort to solve the problem of toll fraud. We hope that our input is helpful to the commission and to our industry. We are most certainly willing to provide any further assistance or testimony to assist in this noble endeavor. Please contact us at any time if we may be of further assistance. We wish you all the best of luck.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Lord". The signature is fluid and cursive, with a prominent initial "J".

Jeffrey S. Lord
Director of Sales and Marketing

A handwritten signature in black ink, appearing to read "Joseph Sullivan". The signature is fluid and cursive, with a prominent initial "J".

Joseph Sullivan
Vice President

JSL/env